

## Message Text

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ACTION L-03

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TO SECSTATE WASHDC PRIORITY 2894

C O N F I D E N T I A L CARACAS 4543

E.O. 11652: GDS

TAGS: EINV PFOR VE

SUBJECT: OCCIDENTAL PETROLEUM BRIBERY CASE

REF: STATE 089873

1. SUMMARY: AT THE ROOT OF THIS CASE IS THE ALLEGATION THAT OCCIDENTAL OBTAINED ITS SERVICE CONTRACT BY BRIBING PERSONS WHO COULD INFLUENCE THE AWARDED OF THAT CONTRACT. THE CHARGE IS UNDER INVESTIGATION BY A SPECIAL EXAMINING MAGISTRATE WHOSE DECISION IS EXPECTED IN THE LATTER PART OF MAY. THAT DECISION, RATHER THAN THE INTERIM REPORT OF THE BICAMERAL CONGRESSIONAL COMMITTEE, WILL TRIGGER A GOV RESPONSE. SINCE VENEZUELAN LAW PROVIDES FOR THE SETTING ASIDE OF CONTRACTS OBTAINED BY ILLEGAL MEANS, WE DO NOT AT THE MOMENT SHARE THE DEPARTMENT'S VIEW THAT THE QUESTIONS OF ALLEGED BRIBERY AND COMPENSATION FOR NATIONALIZED

ASSETS ARE SEPARABLE AND DISTINCT. IF BRIBERY WAS NOT INVOLVED IN THE LETTING OF THE CONTRACT, THE GOV MAY CHOOSE TO PASS THE COMPENSATION PROBLEM TO THE COURTS BY FILING AN EXPROPRIATION COMPLAINT. WE WILL CONSULT FURTHER WITH THE DEPARTMENT WHEN THE EXAMINING MAGISTRATE ISSUES HIS DECISION. END SUMMARY.

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2. A BRIEF REVIEW OF THE BACKGROUND OF THIS CASE MAY BE HELPFUL TO THE DEPARTMENT. IT WILL BE RECALLED THAT OCCIDENTAL HELD NO CONCESSIONS IN VENEZUELA BUT WAS AWARDED IN 1971 A SERVICE CONTRACT IN THE SOUTHERN SECTION OF LAKE MARACAIBO. THAT CONTRACT BECAME SUBJECT TO NATIONALIZATION UNDER ARTICLE 25 OF THE NATIONALIZATION LAW, WITH COMPENSATION TO BE PAID ONLY FOR THE "AMOUNT OF THE INVESTMENTS MADE IN THOSE BLOCKS WHERE COMMERCIAL PRODUCTION HAS BEEN DISCOVERED." IN SEPTEMBER OF LAST YEAR THE MINISTRY OF MINES DECLARED OCCIDENTAL'S BLOCK E COMMERCIAL OVER THE OBJECTIONS OF CVP, THE STATE OIL COMPANY. OCCIDENTAL STOOD TO RECOVER APPROXIMATELY \$42 MILLION OF INVESTMENT.

3. IN OCTOBER THE BRIBERY CHARGES SURFACED AS A RESULT OF A COURT ACTION IN TEXAS. PRESIDENT PEREZ THEREUPON ORDERED ALL ACTION ON OCCIDENTAL'S CLAIM SUSPENDED UNTIL AN APPROPRIATE INVESTIGATION COULD BE CONCLUDED. HE INSTRUCTED THE FISCAL GENERAL (ROUGHLY EQUIVALENT TO ATTORNEY GENERAL) TO PROCEED IN THAT REGARD AND THE CASE WAS ASSIGNED TO A SPECIAL EXAMINING MAGISTRATE OF THE 12TH PENAL COURT OF CARACAS, DR. NOEL PANTOJA.

4. THE CONGRESS THROUGH A BICAMERAL COMMITTEE LAUNCHED ITS OWN INVESTIGATION. IN ADDITION, PRESIDENT PEREZ UNDERTOOK A CONFIDENTIAL INVESTIGATION, THE RESULTS OF WHICH WERE SUBSEQUENTLY FURNISHED TO THE EXAMINING MAGISTRATE BY THE FISCAL GENERAL (CARACAS 1820). FOR ITS PART, THE BICAMERAL COMMITTEE ISSUED ON MARCH 31 THE INTERIM REPORT TO WHICH THE REFTEL REFERS. THAT REPORT WAS ALSO TRANSMITTED TO THE EXAMINING MAGISTRATE. IT SHOULD BE CLEAR THAT THE LATTER IS AN ENTIRELY AUTONOMOUS MEMBER OF THE JUDICIAL BRANCH WHO UNDER VENEZUELAN LAW WOULD TREAT REPORTS FROM THE CONGRESS AND/OR THE EXECUTIVE NO DIFFERENTLY THAN HE WOULD ANY OTHER EVIDENCE SUBMITTED TO HIM.

5. ACCORDING TO THE PRESS, DR. PANTOJA HAS NOW COMPLETED THE EVIDENTIARY ASPECT OF HIS INVESTIGATION AND IS CONSIDERING HIS DECISION. THAT DECISION IS EXPECTED IN THE LATTER HALF OF MAY. THE MAGISTRATE MAY FIND THAT NO GROUNDS EXIST FOR PROSECUTION OR HE CAN BIND A PERSON OR PERSONS OVER FOR TRIAL. OCCIDENTAL AND ITS LAWYERS HAVE UNDERSTOOD FROM THE OUTSET THAT NO GOV ACTION ON THE COMPENSATION ISSUE COULD BE EXPECTED UNTIL THE EXAMINING MAGISTRATE HAD ISSUED HIS DECISION. AT THE HEART OF THIS MATTER CONFIDENTIAL

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IS THE ALLEGATION THAT OCCIDENTAL OBTAINED ITS SERVICE CONTRACT THROUGH ILLEGAL MEANS. IF THAT ALLEGATION IS SUSTAINED, THE CONTRACT CAN BE SET ASIDE UNDER VENEZUELAN LAW--AS IT COULD, WE ASSUME, UNDER U.S. LAW. (THE STATEMENT BY THE CONGRESSIONAL COMMITTEE THAT THE ALLEGED BRIBERY HAD NO EFFECT ON THE AWARDING OF THE CONTRACT IS, OF COURSE, WITHOUT LEGAL EFFECT.)

6. IT IS OUR CONCLUSION BASED ON THESE FACTS THAT, CONTRARY TO

THE DEPARTMENT'S VIEW, THE ALLEGED BRIBERY AND THE QUESTION OF COMPENSATION ARE VERY MUCH RELATED. I DO NOT BELIEVE THAT WE CAN REASONABLY ASK THE GOV TO DISASSOCIATE THE TWO UNTIL AND IF THE EXAMINING MAGISTRATE DETERMINES THAT THERE IS NO PROSECUTABLE CASE AGAINST AN INDIVIDUAL WHO MIGHT HAVE INFLUENCED THE AWARDED OF OCCIDENTAL'S CONTRACT. WITH RESPECT TO THE INTERIM REPORT OF THE BICAMERAL COMMITTEE, IT STATES TEXTUALLY: QUOTE: THE CONGRESS OF THE REPUBLIC URGES THE EXECUTIVE POWER TO TAKE EVERY AVAILABLE MEASURE TO AVOID PAYING OCCIDENTAL PETROLEUM ANY SUM BY WAY OF COMPENSATION. TO THAT END THE BICAMERAL COMMITTEE WILL FURNISH NEW AND IMPORTANT EVIDENCE WITH RESPECT TO THE CITED COMMERCIALITY OF BLOCK E. END QUOTE. THAT RECOMMENDATION SEEMS TO US TO ACKNOWLEDGE IMPLICITLY THAT IN THE ABSENCE OF PROOF OF EFFECTIVE BRIBERY, ONLY A REVERSAL OF THE FINDING OF COMMERCIALITY WOULD PERMIT THE GOV TO AVOID PAYMENT OF COMPENSATION.

7. IT IS, OF COURSE, TRUE THAT THE GOV WILL FIND IT DIFFICULT POLITICALLY TO PAY OCCIDENTAL WHATEVER THE EXAMINING MAGISTRATE'S FINDINGS MAY BE. HOW THE NATIONALIZATION LAW WILL WORK WHEN AND IF THAT DECISION PRESENTS ITSELF IS UNCLEAR. AS THE DEPARTMENT WILL RECALL, THE LAW PROVIDED THAT THE GOV WOULD MAKE AN OFFER OF COMPENSATION WITHIN 45 DAYS OF THE PROMULGATION OF THE LAW. BECAUSE OF THE "SUSPENSION" IMPOSED BY THE PRESIDENT, NO OFFER WAS TENDERED TO OCCIDENTAL. THE COMPANY'S LOCAL COUNSEL BELIEVES THAT THE GOV MIGHT DECIDE TO PROCEED BY THE ROUTE OF THE EXPROPRIATION COMPLAINT ENVISAGED IN ARTICLE 13, ALTHOUGH HERE AGAIN THERE IS A QUESTION OF LAPSED TIME LIMITS. AN EXPROPRIATION COMPLAINT WOULD PERMIT THE GOV TO SHIFT THE BURDEN OF FIXING COMPENSATION TO THE COURTS. A PUBLIC STATEMENT SOME TIME BACK BY THE MINISTER OF MINES INDICATED THAT THIS WAS WHAT THE GOVERNMENT HAD IN MIND IN THE EVEN THE BRIBERY ALLEGATIONS WERE NOT RESOLVED IN A CLEAR CUT FASHION. IF THE GOV DOES NOTHING--ANOTHER DISTINCT POSSIBILITY--OCCIDENTAL CAN BRING ACTION IN THE

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SUPREME COURT.

8. TO CONCLUDE, IN MY JUDGMENT THE OCCIDENTAL CASE IS NOT, AT LEAST YET, AN EXAMPLE OF THE GOV'S "PROCLIVITY TO USE EXPROPRIATION/CONFISCATION AS A GENERAL CRIMINAL SANCTION." THE GOV WOULD HAVE BEEN REMISS IN ITS OBLIGATIONS TO HAVE COMPENSATED OCCIDENTAL IN THE FACE OF AN ACCUSATION, BACKED BY CONSIDERABLE CIRCUMSTANTIAL EVIDENCE, THAT THE CONTRACT FOR WHICH THE COMPANY WAS BEING COMPENSATED HAD BEEN OBTAINED ILLEGALLY. THE PROBLEM WILL COME LATER ON IF THE EXAMINING MAGISTRATE'S DECISION INDICATES THAT PROOF OF SUCH ILLEGALITY IS NOT AVAILABLE. WE WILL CONSULT FURTHER WITH THE DEPARTMENT WHEN HIS DECISION IS AT HAND.

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## Message Attributes

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